HAMRI BIN NOORSAE & ANOR.

v.

MAS ROBIL BIN BUANG & 3 ORS.

HIGH COURT MALAYA, JOHOR BAHRU
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK J
[CIVIL APPEAL NO. 12-65-1991]
29 MAY 1995

TORT: *Road accident - Appeal against quantum of damages - Learned trial Judge awarding damages without reference to comparables - Mere speculation - Whether proper - Whether appellate Court entitled to interfere - Trial Court awarding loss of earnings - Whether loss of earnings forms part of general damages which need not be pleaded.*

The learned Sessions Court Judge found the first appellant driver solely responsible for the frontal collision involving the motor lorry driven by him and a motorcar driven by the first respondent with the second, third and fourth respondents as passengers.

The appellant accepted the trial Court's decision on liability and argued that the trial Court went wrong in awarding the quantum of damages.

Held:

[1] The trial Court in awarding RM18,000 to the fourth respondent for a cerebral concussion did not rely on a single authority to back up its award. This was against the guidelines issued by the Federal Court in *Ngooi Ku Siong & Anor. v. Public Prosecutor* to the effect that it is not proper for the Judge to discard the authorities and rely on mere experience to assess damages as experience alone without resorting to comparable cases may result in speculation.

[2] In any event it is trite law that in an appeal against the quantum of damages the onus on the appellants is heavy and it must be established plainly that the trial Court's award was a wholly erroneous estimate. In the present case there was evidence that the fourth respondent's impairment of memory had prevented her from travelling outstation and based on the comparables the award under this head was fair and reasonable.

[3] The award of RM5,000 for multiple ugly scars on the fourth respondent's right forehead and chin and for lacerations was reasonable taking into account the comparable cases and bearing in mind the inflationary rate and the value of the Ringgit. Likewise the award of RM8,000 for a fracture of the right glenoidal angle was not clearly wrong and should not be disturbed.

[4] On the appellant's argument that the trial Court had made an award for loss of allowance although it was not specifically pleaded, it is trite law that loss of earnings form part of general damages which need not be pleaded. In the light of the decided cases the loss of an allowance must be construed as loss of earnings and in the circumstances of the present case, although the method of calculation adopted by the trial Court using the wrong multiplier resulted in a lower quantum for loss of earnings, since there was no cross appeal by the fourth respondent on the question of inadequacy of the quantum of loss of earnings, the award made under this head should not be disturbed.

[5] On the appellant's argument that a figure of RM4,000 was adequate for the subluxation of the L4 and L5 vertebra suffered by the third respondent, the specialist medical report made it quite clear that the third respondent had suffered more than a sprain and in the

circumstances the trial Court's award of RM13,000 was reasonable. As it was clear that the trial Court had not breached the "good gracious" test propounded in the cases of *Wong Khang Jong v. Ali & Anor. and United Plywood and Sawmill Ltd. v. Lock Ngan Loi* and as there were no serious errors of assessment on the part of the trial Court so as to enable the appellate Court to intervene, the awards made in favour of the third respondent for the injuries sustained by her should not be disturbed.

[Appeals dismissed with costs].

Cases referred to:
Thangachimmah & Anor. v. Flower [1968] 2 MLJ 248 ***(refd)***
Zainun bte Abdul Ghani & Anor. v. Chong Ah Seng & Anor. [1975] 1 MLJ 33 ***(refd)***
Ngooi Ku Siong & Anor. v. Public Prosecutor [1985] 1 MLJ 30 FC ***(foll)***
Hang Jong Juan v. Tan Yeo Soon [1986] 2 MLJ 5 ***(refd)***
Teo Ah Ley v. Tan Kim Hock [1988] 1 MLJ xxxiv ***(refd)***
Lee Hock Leong & Anor. v. Chua Leng Hock [1988] 2 MLJ x1ix ***(refd)***
Ang Kok Leong v. Bennie Tan Keok Hee [1991] MD 303 ***(refd)***
Wong Yee Cheong & Anor. v. Toh Seng Chuan [1988] 2 MLJ xxx ***(refd)***
Chua Siow Moy v. Chua Gek Kuon [1991] MD 305 ***(refd)***
Tay Peck Low v. Lim Ngo [1986] 1 MLJ xci ***(refd)***
Mohamad Yassin bin Isa & 2 Ors. v. M.C.W. Express Sdn. Bhd. & 4 Ors. [1988] 1 CLJ 821 ***(refd)***
Lian Thoo v. Sawiyah & Ors. [1982] 1 MLJ 286 ***(refd)***
Santokh Singh s/o Karnail Singh v. Singapore Bus Service [1978] Ltd [1982] 2 MLJ x1viii ***(refd)***
Low Chee Siang & Anor. v. Wong Chong Pow & Anor. [1991] MD 316 ***(refd)***
Wong Yoke Lian v. Toh Eng Han [1992] MD 333 ***(refd)***
Tan Suan Yau v. Suhindrimani [1985] 2 MLJ 22 SC ***(refd)***
Lim Ah Chi v. Tan Ah Mui & Anor. [1969] 1 MLJ 215 FC ***(refd)***
Balakrishnan s/o Kunjamboo Nair v. Savastine Anthony s/o Francis [1991] 1 CLJ 503 ***(refd)***
Red And Yellow Omnibus Co. Sdn. Bhd. & Anor. v. Chuah Lay Boon [1993] 2 CLJ 480 ***(refd)***
Sam Wun Hoong v. Kader Ibramshah [1981] 1 MLJ 295 FC ***(foll)***
Yeoh Cheng Han v. Official Administrator, Malaya [1972] 2 MLJ 7 FC ***(refd)***
Mahmod bin Kailan v. Goh Seng Choon & Anor. [1976] 2 MLJ 239 FC ***(refd)***
Thangavelu s/o Chinnasamy v. Chia Kok Bin [1981] 2 MLJ 277 ***(refd)***
Mohd. Pubillah bin. Omar v. Lakhbir Singh a/l Jadgar Singh [1988] 1 MLJ xxxiii ***(refd)***
Seah Yit Chen v. Singapore Bus Service [1978] Ltd. [1990] 3 MLJ 144 ***(refd)***
Tarmi bte Sanusi & Anor. v. Yusoff Bashah & Others [1986] 2 MLJ cclvii ***(refd)***
Rasidin bin Partorjo v. Frederick Kiai [1976] 2 MLJ 214 ***(refd)***
Kek Kee Leng v. Teresa Bong Nguk Chin & Anor. [1978] 1 MLJ 61 ***(refd)***
Mohamed Ibrahim & Anor v. Christopher Piff & Anor. [1981] 1 MLJ 221 ***(refd)***
Ng Moon Leong v. Seema Balvantrai Goda [1986] 2 MLJ 405 ***(refd)***
Wong Khang Jong v. Ali & Anor. [1970] 1 MLJ 56 ***(foll)***
United Plywood And Sawmill Ltd. v. Lock Ngan Loi [1970] 2 MLJ 237 ***(foll)***

Legislation referred to:
Civil Law Act, 1956, s. 28A (2) (d)

Other source referred to:
Black's Medical Dictionary, William A.R. Thomson M.D.

JUDGMENT

Abdul Malik bin Hj. Ishak J:

On the facts, the Sessions Court Judge ("trial Court") was correct in holding that the first appellant was solely responsible for the accident whilst driving motorlorry JAC 1990 from the direction of Mersing to Johor Bahru on 25 May 1987 at about 11.50 a.m. and collided frontally with an oncoming motorcar JBA 2756 from the opposite direction driven by the

first respondent with the second, third and fourth respondents as passengers. All the respondents gave evidence in tangent, corroborating one another in material particulars which left, at the end of the day, no doubt at all that the first appellant was the sole author of the accident.

The first respondent testified before the trial Court that when he saw the oncoming motorlorry he tried to swerve to the side table to avoid the collision but, unfortunately, was unable to do so. The first appellant surprisingly in his evidence admitted that he went over to his right and encroached onto the path of the motorcar. This piece of damning evidence was supported by the sketch plan which showed the positions of the vehicles after the accident - located entirely on the respondent's side of the road.

The first appellant sought to establish the defence of inevitable accident and testified that he swerved the motorlorry to its left in an attempt to avoid the door of another motorlorry which had opened and which motorlorry came from the direction of Johor Bahru thereby causing him to lose control of the motorlorry driven by him which finally ended onto the first respondent's side of the road. Now, if one were to accept the version of the first appellant in the context of the defence of inevitable accident, it would mean that a big, solid vehicle like a motorlorry could swerve to its left, spin and fly over to the right and encroached onto the path of the first respondent with ease. Such deductions would simply go against logic and commonsense. The first respondent's version of how the accident took place was more credible and the trial Court must have taken that into account when it gave liability solely on the shoulder's of the first appellant. It was the respondents' case that the first appellant was overtaking at the material time and had in an uncontrollable manner gone over to the right onto the path of the first respondent. In *Thangachimmah & Anor. v. Flower* [1968] 2 MLJ 248, the defence of inevitable accident was raised and the Court there accepted the now famous principle that an inevitable accident should be defined as "that which the party charged with the offence could not possibly prevent by the exercise of ordinary care, caution and maritime skill. The Court there also went further and adopted the principle that the burden of proving inevitable accident was on the defendant and that " he can only get rid of that proof against him by shewing inevitable accident, that is by shewing that the cause of the collision was a cause not produced by him, but a cause the result of which he could not avoid. In *Zainun bte Abdul Ghani & Anor. v. Chong Ah Seng & Anor.* [1975] 1 MLJ 33, the defendants there pleaded inevitable accident as one of the tyres had burst thereby causing the vehicle to go out of control. The Court held that there was negligence on the part of the first defendant in using worn out equipment and that the defence of inevitable accident was not open to him.

Be that as it may, the appellants were happy with the decision of the trial Court as far as liability goes and they argued that the trial Court went wrong in awarding the quantum of damages and this appeal was principally focussed on this point.

At the outset, it must be stated that the trial Court heard simultaneously three cases together in one go and these cases were Civil Action 63-151-1988, Civil Action 63-152-1988 and Civil Action 63-6-1988. These appeals were concerned only with the first two cases.

Civil Action No: 63-151-1988.

The fourth respondent Kam Yong Lee (f) ("Kam") sustained cerebral concussion. The specialist report at page 103 of the appeal record described her condition as follows : " Since the accident she has been suffering from headache, 3 to 4 times a week, impairment of memory, giddiness, blurring of her vision ...." Under this head, the trial Court awarded RM18,000. Unfortunately, in arriving at this figure the trial Court did not rely on a single authority to

back up its award. This was certainly not the correct approach to assess damages. The then Federal Court in the case of *Ngooi Ku Siong & Anor. v. Public Prosecutor* [1985] 1 MLJ 30 FC, did not consider it proper for the learned Judge to discard the authorities and rely on mere experience to assess the damages. Experience alone, according to the Federal Court, no matter how long without resorting to comparable cases which are the best guides, may result in speculation. Thus, in awarding RM18,000 under this head the trial Court embarked on pure speculation.

In *Hang Jong Juan v. Tan Yeo Soon* [1986] 2 MLJ 5 (a Singapore case), the appellant suffered a compound depressed skull fracture in the right parieto-occipital region. The fracture was surgically treated by removal of the depressed bone and repair of torn dura. The appellant was nine at the date of the accident and thirteen at the date of the trial. After his discharge, the appellant received outpatient treatment and there was indication that he stood a good chance of suffering from epileptic fits. The trial Judge assessed damages for pain and suffering and loss of amenities at S$25,000 and this figure was affirmed by the Singapore Court of Appeal.

In *Teo Ah Ley v. Tan Kim Hock* [1988] 1 MLJ xxxiv, for fracture of occipital bone, severe contusion of the left frontal lobe and total loss of sense of smell due to the head injury, the Court gave for general damages RM26,000. In addition to these injuries there were also disabilities, for instance, the loss of sense of smell was said to be permanent and symptoms of dizziness and a feeling of going "black out" several times a month.

In *Lee Hock Leong & Anor. v. Chua Leng Hock* [1988] 2 MLJ x1ix, the facts briefly were that the plaintiff a student, was 12 years old at the time of the accident. He sustained the following injuries: (a) mild cerebral concussion; (b) right perorbital and subconjunctival haemorrhage; (c) bleeding from the right ear from suspected basal skull fracture; (d) swelling over the right malar region. As a result of which the plaintiff suffered from : (a) mild diminished hearing in the right ear; (b) subjective sensation of occasional giddiness, usually induced by sudden head movement; and (c) slight prominence of the right malar region. General damages awarded were RM6,000 for cerebral concussion with permanent giddiness; RM4,000 for impairment of hearing; and RM1,000 for permanent prominence of right malar region.

In *Ang Kok Leong v. Bennie Tan Keok Hee* [1991] Mallal's Digest page 303 where the Singapore Court granted S$6,000 for cerebral concussion and momentary loss of consciousness and vertigo with nausea.

Now, reverting back to the present appeal no doubt the trial Court did not rely on a single comparable to support the quantum under this head, yet it is now trite law that in an appeal against the quantum of damages the onus on the appellants is heavy and it must be established plainly that the trial Court's award was a wholly erroneous estimate. Here, there was evidence that Kam's impairment of memory had prevented her from travelling outstation thereby barring her from her previous outstation monetary entitlement and the joy of travelling away from the work place. The award of RM15,000 in the circumstances, was fair and reasonable.

Kam also sustained multiple ugly scars on her right forehead and chin and lacerations and the trial Court awarded RM5,000 without citing any comparables. In *Wong Yee Cheong & Anor. v. Toh Seng Chuan* [1988] 2 MLJ xxx, for permanent scars, Eusoff Chin J, (now the Chief Justice of Malaysia) awarded RM8,500. In a Singapore case of *Chua Siow Moy v. Chua Gek Kuon* [1991] Mallal's Digest page 305, for facial lacerations with scars a sum of S$12,000.00 was awarded. In *Tay Peck Low v. Lim Ngo* [1986] 1 MLJ xci, the injuries sustained by the plaintiff were: (1) head - 2 x 1/4" lacerated wound occipital region and (2)

limb - abrasions and scratch marks on both popliteal region and back of both elbow joint and on lumbar spine. Abdul Razak J, awarded RM3,500 for pain and suffering. Wan Yahya Pawan Teh J, (now FCJ) in *Mohamad Yassin bin Isa & 2 Ors. v. M.C.W. Express Sdn. Bhd. & 4 Ors.* [1988] 1 CLJ 821, rightly pointed out that the quantum awarded for *Tay Peck Low's* case "for lacerations and scars on a lady teacher must be considered to be more damaging than similar injuries suffered by a 51 year old man." In all the circumstances, the award of the trial Court of RM5,000 under this head bearing in mind the inflationary rate and the value of the ringgit was reasonable and it should remain (*Lian Thoo v. Sawiyah & Ors.* [1982] 1 MLJ 286).

Next, Kam sustained a fracture of the right glenoidal angle (shoulder bone) and for this the trial Court relied on *Santokh Singh s/o Karnail Singh v. Singapore Bus Service* [1978] Ltd [1982] 2 MLJ x1viii, and awarded RM8,000. In *Santokh Singh* the plaintiff there was aged 48 years and held the position of a storeman with the Singapore Armed Forces. He sustained a closed fracture of left clavicle, fracture of left 4th and 6th ribs and comminuted fracture, lower 1/3 of left fibula fracture of medial malleolus internally fixed by screw and metal rod. Pain in the left ankle was bound to get worse and it may be necessary to arthrodese the ankle joint in future. The Court there awarded the following quantum of damages:

(1) ribs - S$2,000

(2) clavicle - S$4,500

(3) potts fracture - S$12,000

In *Low Chee Siang & Anor. v. Wong Chong Pow & Anor.* [1991] Mallal's Digest at page 316, for fracture of clavicle a sum of RM8,000 was awarded. In *Wong Yoke Lian v. Toh Eng Han* [1992] Mallal's Digest at page 333, the Singapore Court awarded S$10,000 for fracture of the right clavicle. Clearly therefore in awarding RM8,000 for this injury the trial Court was not wrong and I do not propose to disturb it.

It was argued strenuously that these awards were excessive and that there was an element of overlapping. On excessiveness, what is germane to consider is whether there was an erroneous estimate of the amount of damages awarded by the trial Court by an omission to consider relevant material or that it had considered irrelevant material. Towards this end, the appellants failed to prove that the trial Court had erred gravely (*Tan Suan Yau v. Suhindrimani* [1985] 2 MLJ 22 SC). In regard to overlapping, the injuries sustained by Kam related to different parts and functions of the body and it is my view that it is quite justifiable to itemise the injuries received by her separately. I am also satisfied that there was no question of overlapping or duplication and, consequently, no deductions ought to be made.

The memorandum of appeal alleged that the trial Court awarded loss of allowance despite lack of documentary proof. It was submitted that special damages must be specifically proved and the failure to produce documentary evidence was fatal to a claim under this head. Now, what was the evidence that was adduced before the trial Court? Under examination-in-chief, Kam said that she used to be the manager cum secretary and was paid a salary of RM1,800 and a mileage allowance of RM700 - making it a grand total of RM2,500. But unfortunately as a result of her head injuries, she became forgetful and had to forego her outstation trips thereby depriving her of RM700 mileage allowance. She testified that if she were to go outstation she had to take orders and collect monies and in her forgetful state her employers did not allow her to go outstation. She was cross-examined as to why she did not write down the orders and to this she replied that she had difficulty in conversing. Under cross-examination it was established that she had income tax returns and EPF contributions but

she forgot to bring them to Court. Her employer by the name of Shew Chee Kim gave evidence and he testified that Kam's salary was reduced from RM2,500 to RM1,800 as she could not go outstation. He testified that she tried to go outstation after the accident but unfortunately she again met with an accident and hence had a phobia of driving. He testified that she paid her 1979 income tax and he himself ensured that her EPF contributions were deducted. He also testified that he paid for her SOCSO contributions. Unfortunately, like Kam, he also forgot to bring those documents to Court. It must not be forgotten that the trial Court had an added advantage over the appellate Court in seeing, hearing and assessing the evidence of Kam and her employer in its correct perspective and it is for this reason that I am not inclined to disturb this part of the award handed down by the trial Court. It is true that Kam and her employer failed to produce documents verifying the salaries, mileage allowances, EPF and SOCSO contributions of Kam. This default should not pose as a stumbling block. In *Lim Ah Chi v. Tan Ah Mui & Anor.* [1969] 1 MLJ 215 FC, Winslow J, speaking for the Federal Court said:

> No finding has been made as to the actual income of the deceased nor even on the question whether the deceased had four employees to assist him in running the "pow" stall at a coffee-shop has any finding been made one way or the other. One is therefore left at large as to the kind of income a "pow" seller at a stall in a coffee-shop in a locality such as the one in question could have made. In the absence of evidence as to this, the Court using its best endeavours to resolve a well-nigh insoluble situation, is driven to use its own understanding of conditions prevailing in Singapore in regard to one-man businesses of this particular kind, to arrive at a reasonable figure which does not conflict with the evidence adduced, bearing in mind that the evidence to some extent went to show that the business was not doing so well after the death of the deceased. The widow herself said that his younger brother was now only making marginal profits and that "pow" were no longer in good demand."

In *Balakrishnan s/o Kunjamboo Nair v. Savastine Anthony s/o Francis* [1991] 1 CLJ 503 especially at page 506, Abdul Malek Ahmad J, said:

> My view was that in the absence of any documentary evidence, I would take judicial notice of the average earnings of marble grinding contract workers to be in the region of about $700 per month and made this award for two years totalling $16,800 up to August 1983.

I have said in *Red And Yellow Omnibus Co. Sdn. Bhd. & Anor. v. Chuah Lay Boon* [1993] 2 CLJ 480 especially at page 485 that:

> The trial Court made a finding of fact that the respondent was earning RM600 per month at the time of the accident based on her KWSP contribution. Such finding of fact should not be disturbed by the appellate Court as the trial Court had the advantage of seeing and hearing the evidence of the respondent in the Court below and assessed the evidence in its correct perspective. This is not one of those rare cases where the appellate Court is justified in coming to a different conclusion from the trial Court.

The trial Court after adverting to the evidence of Kam and her employer concluded that: "Bagaimanapun plaintif gagal mengemukakan keterangan bertulis yang beliau kehilangan elaun perjalanan RM700 sebulan. Tanpa keterangan yang cukup saya benarkan tuntutan ini pada kadar RM300 sebulan x 10 tahun x 12 = RM36,000". This passage was said to refer to loss of an allowance and not loss of earnings and it was for this reason that the memorandum of appeal referred it as such and that being the case it was submitted for the appellants that the trial Court ought not to have awarded any award for loss of earnings. Mohd. Azmi J, (as he then was, now FCJ) in *Sam Wun Hoong v. Kader Ibramshah* [1981] 1 MLJ 295 FC said that loss of earnings form part of general damages which need not be pleaded. But over the years it has become so well-crystallized that it has taken on a new shape.

But I hasten to add that the fact that it has not been pleaded, just like the present appeal, will not deprive the plaintiff of his claim, subject of course to evidence. It is prudent to plead it so that the opposite party will not be taken by surprise. Gill FJ, in *Yeoh Cheng Han v. Official Administrator, Malaya* [1972] 2 MLJ 7, 10 FC, crystallized loss of earnings up to the date of the trial of the action as special damages. In *Mahmod bin Kailan v. Goh Seng Choon & Anor.* [1976] 2 MLJ 239, 240 FC, the Court awarded a sum of money as loss of income per month and multiplied it by the number of months the plaintiff did not work from the date of accident to date of trial and called it actual loss of earnings. The same principle was also applied in *Thangavelu s/o Chinnasamy v. Chia Kok Bin* [1981] 2 MLJ 277. It is my judgment and I so hold that the loss of an allowance must be construed as loss of earnings and using the amount of RM300 (I accept this figure as arrived at by the trial Court) on a multiplier of 16 under s. 28A(2)(d)(i) of the Civil Law Act, 1956 as Kam was 28 years of age at the time of the accident, the total amount would come to RM57,600 (*Red and Yellow Omnibus Co. Sdn. Bhd. v. Chuah Lay Boon (supra)*). Obviously the method of calculation adopted by the trial Court using the wrong multiplier resulted in a lower quantum for loss of earnings. Be that as it may, both parties overlooked this point and since there was no cross-appeal by the fourth respondent on the question of inadequacy of the quantum of loss of earnings, I do not propose to disturb the award under this head.

Civil Action No: 63-152-88

Kerk Tua Mooi (f) ("Kerk") was the third respondent and according to the medical report at page 105 of the appeal record she sustained the following injuries:

(1) Periorbital heamatoma, laceration and a 3 inch scar over her right forehead and upper eyelid and for these injuries the trial Court awarded RM3,000.

(2) Cerebral concussion and loss of consciousness where the trial Court awarded RM1,500.

(3) Fracture of the frontal bone resulting in occipital headache and memory impairment. For these injuries the trial Court awarded RM18,000.

(4) Slipped L4 and L5 vertebra resulting in backache weakness of movement of both toes where the trial Court awarded RM13,000. In *Mohd. Pubillah bin. Omar v. Lakhbir Singh a/l Jadgar Singh* [1988] 1 MLJ xxxiii, for stable fracture of the body of the 6th cervical vertebra where the neck was said to be more prone to developing cervical spondylosis the Court awarded RM9,500. In *Seah Yit Chen v. Singapore Bus Service* [1978] Ltd [1990] 3 MLJ 144, for fractured vertebra the Singapore Court awarded S$10,000. In sharp contrast, in *Tarmi bte Sanusi & Anor. v. Yusoff Bashah & Others* [1986] 2 MLJ cclvii, the Court awarded RM4,000 for fracture of the lumbar vertebra and this authority was heavily relied upon by the appellants' Counsel. It was submitted that Kerk sustained subluxation of the L4 and L5 and the word "subluxation" meant "a partial dislocation, and is a term sometimes applied to a sprain" (see *Black's Medical Dictionary* by William A.R. Thomson M.D.) and, consequently, it was submitted that a sum of RM4,000 was an appropriate figure. But Kerk's medical condition can be described by quoting verbatim what the Consultant Physician and Neurologist said in the Specialist medical report at page 105 of the appeal record. This was what the specialist said:

> Her backache is aggravated by movement; as a result her activities had to be restricted.

In another part of the specialist report it was said that :

> The accident also caused her L4 vertebra to slip over the L5 vertebra with prolapse of the disc.

Undoubtedly, Kerk had more than a sprain and the award by the trial Court under this head was reasonable in the circumstances.

The pertinent question to ask is this: Was there a serious error of assessment on the part of the trial Court as to enable the appellate Court to intervene? (see *Mahmod bin Kailan v. Goh Seng Choon & Anor.* [1976] 2 MLJ 239; *Rasidin bin Partorjo v. Frederick Kiai* [1976] 2 MLJ 214; *Kek Kee Leng v. Teresa Bong Nguk Chin & Anor.* [1978] 1 MLJ 61; *Mohamed Ibrahim & Anor. v. Christopher Piff & Anor.* [1981] 1 MLJ 221, 222; and *Ng Moon Leong v. Seema Balvantrai Goda* [1986] 2 MLJ 405). I do not think so and I do not propose to disturb the awards made in favour of Kerk for injuries sustained by her. The trial Court had not breached the now famous "good gracious" test propounded in the following two cases as to warrant an interference by me. In *Wong Khang Jong v. Ali & Anor.* [1970] 1 MLJ 56, Ong Hock Thye CJ, (as he then was) said at page 57:

> The test which an appellate Court has to apply in cases of appeal against quantum is that which Winn LJ, has expressed in vivid and meaningful language: "Good gracious me, is this clearly wrong ?": see *Watson v. Powles* [1967] 3 ALL ER 721, 723. In more prosaic terms: "Is this a wholly erroneous estimate?"

In *United Plywood And Sawmill Ltd. v. Lock Ngan Loi* [1970] 2 MLJ 237, Gill FJ said at page 238:

> The general principle is that an appellate Court can only interfere with an assessment if it is considered so inordinately low or inordinately high as to make the Court exclaim, "Good gracious, is that the sum which has been awarded that sum must be altered" or if it is so much out of line with the discernible trend or pattern of awards in reasonably comparable cases that it must be regarded as a wholly erroneous estimate.

For the reasons adumbrated above, I dismissed these appeals with costs.